

ISMAIL J. RAMSEY (CABN 189820)  
United States Attorney  
MICHELLE LO (NYRN 4325163)  
Chief, Civil Division  
MICHAEL A. KEOOUGH (NYRN 5199666)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-6878  
Fax: (415) 436-7234  
[michael.keough@usdoj.gov](mailto:michael.keough@usdoj.gov)

### *Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

12 AMERICAN IMMIGRATION COUNCIL and ) Case No. 3:23-CV-05270-SK  
13 CENTER FOR GENDER AND REFUGEE )  
14 STUDIES, ) **JOINT CASE MANAGEMENT STATEMENT**  
15 Plaintiffs, )  
16 v. )  
17 U.S. CUSTOMS AND BORDER )  
18 PROTECTION and U.S. DEPARTMENT OF )  
HOMELAND SECURITY, )  
Defendants. )

Plaintiffs and Defendants (collectively, the “Parties”) submit this Joint Case Management Statement ahead of the February 12, 2024 Case Management Conference in the above-captioned matter.

## 1. Jurisdiction and Service

The Parties agree that the Court has subject matter jurisdiction over claims against the United States pursuant to 28 U.S.C. § 1331 and the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* The parties also agree that venue is proper in the United States District Court for the Northern District of California because Plaintiff Center for Gender and Refugee Studies has its principal place of business in this district. All defendants have been served.

1 **2. Facts**

2 This case concerns a FOIA request seeking five categories of records regarding U.S. Customs  
 3 and Border Protection's implementation of the "CBP One" mobile phone application.

4 Defendants' response to the FOIA requests is ongoing and the Parties have been diligently  
 5 negotiating to agree on the scope of the response and the records to be searched. Defendants agreed to  
 6 conduct a search for items 1, 2, 3 and 5 of the July 11 request. On January 12, 2024, the Parties agreed  
 7 to the following search parameters to identify potentially responsive records applicable to item 4, i.e.  
 8 communications between CBP staff and Mexican government officials:

9 **CUSTODIANS / DATE RANGE**

10 For the following date range: December 1, 2022 to July 11, 2023

11 From the following ports: 1) San Ysidro; 2) Nogales; 3) Eagle Pass; 4) El Paso;  
 12 5) Brownsville; 6) Hidalgo; 7) Agua Prieta; and 8) San Luis Rio Colorado

13 The following six positions to be searched at each POE: 1) Director of Field  
 14 Operations; 2) Assistant Director of Field Operations; 3) Program Manager; 4)  
 Port Director; 5) Assistant Port Director; and 6) Watch Commander

15 **TERMS**

16 For request sub-part 1, the following terms:

17 contain (1) at least one of the terms "CBP One," "mobile phone app," or "cell phone app"

18 AND a hit on the following search:

19 (individual or noncitizen or 'single adult~' or FMUA~ or 'family unit~') /7 ((without) /5  
 20 "schedule\* appointment") or "walk up" or (no /7 appointment))

21 For request sub-part 4, the following terms:

22 contain (1) at least one of the terms "CBP One," "mobile phone app," "cell phone app," or  
 a hit on the following search:

23 (individual or noncitizen or 'single adult~' or FMUA~ or 'family unit~') /7 ((without) /5  
 24 ('schedule appointment" or "walk up" or (no /7 appointment))

25 and (2) also contain at least one of the following terms (taken from the FOIA  
 26 request):

- 27     ○ Instituto Nacional de Inmigración
- 28     ○ "INM"
- 28     ○ Mexic\* w/5 (police OR law enforcement)
- 28     ○ Guardia Nacional
- 28     ○ National Guard

- Bienestar Social
- "GOM"
- "gob.mx"
- "Mexican immigration"

Defendants have reached out to the relevant field offices and requested that they compile a list of custodians for each office. Defendants anticipate that these lists will be completed by February 5, 2024. Once Defendant compiles its lists, they will submit a request for CBP's Office of Information Technology and Relativity contractors to begin performing the agreed-upon searches. Defendants estimate that, due to the complexity of the searches and the number of anticipated custodians, it will take 4-6 weeks to conduct the searches and determine the universe of potentially responsive records. Once the volume of records to be reviewed is identified, the Parties can negotiate a schedule for the production of these records.

### 3. Legal Issues

Because Defendants' response to the FOIA request at issue is ongoing, the Parties do not presently have legal issues that require the Court's intervention.

## 4. Motions

There are no motions currently pending. Motions for summary judgment may be necessary to establish whether Defendants' response to the FOIA request at issue meets the requirements of the FOIA.

## 5. Amendment of Pleadings

The Parties do not expect any additional amendments to the pleadings at this time.

## 6. Evidence Preservation

While discovery in FOIA matters is generally unnecessary, the Parties have reviewed the ESI Guidelines and are taking reasonable and proportionate steps to preserve evidence relevant to the issues presented in this action.

## 7. Disclosures

Because this is an Administrative Review case, pursuant to Fed. R. Civ. P. 26(a)(1)(B)(i), this case is exempt from Initial Disclosure requirements and none are believed necessary.

1 **8. Discovery**

2 While discovery is generally not available in FOIA cases and the Parties do not expect that  
3 discovery will need to be conducted in this case, Plaintiffs reserve the right to seek discovery if  
4 necessary.

5 **9. Class Actions**

6 Not applicable.

7 **10. Related Cases**

8 Not applicable.

9 **11. Relief**

10 The Complaint seeks production of the requested documents, costs and attorney's fees, and any  
11 other relief deemed appropriate. Defendants dispute that Plaintiffs are entitled to costs or fees, and  
12 expect that this issue will be resolved once the response to the request is complete.

13 **12. Settlement and ADR**

14 The Parties do not believe that ADR is necessary at this time.

15 **13. Consent to Magistrate Judge for All Purposes**

16 All parties have consented to having a magistrate judge conduct all further proceedings,  
17 including trial and entry of judgment.

18 **14. Other References**

19 This case is not suitable for reference to binding arbitration, a special master, or the Judicial  
20 Panel on Multidistrict Litigation.

21 **15. Narrowing of Issues**

22 The parties have not identified any issues that can be narrowed at this time.

23 **16. Expedited Trial Procedure**

24 At this time, the Parties do not agree to the Expedited Trial Procedure of this Court.

25 **17. Schedule**

26 The parties propose that a status report will be submitted within 45 days of the case management  
27 conference (by March 28, 2024), detailing the results of the search as well as a proposed schedule for  
28 producing the responsive documents.

1 **18. Trial**

2 The parties do not presently expect a trial in this FOIA case. To the extent that motions for  
3 summary judgment are filed, those will be presented to the Court.

4 **19. Disclosure of Non-Party Interested Entities or Persons**

5 Plaintiffs filed their Certification of Interested Entities or Persons pursuant to Civil L.R. 3-15 on  
6 October 16, 2023. *See* Dkt. 2, 3.

7 The disclosure requirements of Civil L.R. 3-15 do not apply to governmental parties.

8 **20. Professional Conduct**

9 Counsel for the Parties have reviewed the Guidelines for Professional Conduct for the Northern  
10 District of California.

11 **21. Other**

12 At this time, the Parties do not believe there are any other matters that relate to the just, speedy,  
13 and inexpensive disposition of this matter.

14 IT IS SO STIPULATED

15 DATED: February 5, 2024

Respectfully submitted,

16 ISMAIL J. RAMSEY  
17 United States Attorney

18 /s/ Michael A. Keough  
19 MICHAEL A. KEOUGH  
Assistant United States Attorney

20 *Attorneys for Defendants*

21 /s/ Raul Pinto\*  
22 NEELA CHAKRAVARTULA  
Center for Gender and Refugee Studies

23 RAUL PINTO  
24 SUCHITA MATHUR  
American Immigration Council

25 *Attorneys for Plaintiffs*

26  
27 \* *In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of  
perjury that all signatories have concurred in the filing of this document.*

## [PROPOSED] CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & [PROPOSED ORDER] is approved as the Case Management Order for this case, and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

DATE:

THE HONORABLE SALLIE KIM  
United States Magistrate Judge